RECOMMENDATIONS: In addition to the recommendations addressed above in the **public interest** section, and the **OSS** and **performance standard** sections addressed below, the Commission recommends the following, the details of which could be established in the collaborative process. The Commission believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. SWBT shall be required to expedite the design process to implement measurement capability in its switching and billing systems for terminating access/originating 800 usage data for the unbundled switch or provide sufficient evidence to demonstrate why expediting this development is not feasible. The Commission further recommends that this issue, including interim compensation solutions, be explored in more detail during the collaborative process among SWBT, the participants, and Commission staff;
2. As an alternative recommendation, in the event SWBT is allowed to provide in-region interLATA service before providing a technical solution to this problem, the Commission could recommend to the FCC that SWBT interLATA relief be limited to originating, non-800 type interLATA service until SWBT has demonstrated that it provides CLECs usage data for these type of calls;
3. If a party wishes to obtain customized routing by using line-class codes, SWBT shall be required to provide such option. The appropriate rates for such service shall be based on forward looking costs. To the extent that no CLEC is interested in obtaining customized routing by using line-class codes at cost-based rates, SWBT may still be considered as "providing" such customized routing in compliance with this checklist item.

ITEM SEVEN: Has SWBT provided nondiscriminatory access to the following, pursuant to section 271(c)(2)(vii) and applicable rules promulgated by the FCC: (a) 911 and E911 services; (b) directory assistance services to allow the other telecommunications carrier's customers to obtain telephone numbers; and, (c) operator call completion services?

RECOMMENDATIONS: In addition to the recommendations addressed above in the **public interest section,** and the **OSS** and **performance standard** sections addressed below, the Commission recommends the following, the details of which could be established in the collaborative process. The Commission believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. SWBT shall provide a compare file to each CLEC so the CLEC can verify the accuracy of 911 database information it has submitted with the actual entry by SWBT. Additionally, SWBT shall include a parity performance measure that would indicate the number of records that were entered incorrectly for its own customers, each CLEC's customers, and all CLEC customers. SWBT shall file these reports for a minimum of three months with the parties and the Commission staff to determine if parity performance violations have occurred. Until such determination is made SWBT has not met the burden of proof that it is indeed providing parity performance;
2. Pursuant to the Mega-Arbs, SWBT shall not remove customer data from the directory assistance (LIDB) database when a new customer is served through UNEs;
3. SWBT shall collaborate with the CLECs and Commission staff to create a procedure to establish non-discriminatory procedures for customers that have been won back;
4. In addition, SWBT has denied access to ILEC directory assistance listings claiming that the

ILECs have not given SWBT permission to release their customer's information. At the hearing, SWBT stated that these listings would be released as soon as that permission was received. Tr. at 1055. SWBT and the participants shall coordinate their efforts to acquire the ILECs' permission through the use of a standard release.

ITEM EIGHT: Has SWBT provided white pages directory listings of customers of other telecommunications carrier's telephone exchange service, pursuant to section 271(c)(2)(B)(viii) of FTA96 and applicable rules promulgated by the FCC?

RECOMMENDATIONS: In addition to the recommendations addressed above in the **public interest** section, and the **OSS** and **performance standard** sections addressed below, the Commission recommends the following, the details of which could be established in the collaborative process. The Commission believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. SWBT shall be required to provide CLEC resellers with the opportunity to review and correct white pages directory listings prior to the date white pages directory listings are published in telephone directories to sustain its burden of proof with regards to the nondiscriminatory access standard between and among carriers;
2. SWBT shall allow CLECs to choose whether their white page listings are interspersed with SWBT listings or whether they are separate from SWBT's listings;
3. SWBT shall allow CLEC resellers the same options as facilities-based CLECs for distribution of white page telephone directories;
4. SWBT shall institute a procedure to permit CLECs to adhere advertisements to the white pages directory.

ITEM NINE: Has SWBT provided nondiscriminatory access to telephone numbers for assignment to the other telecommunications carrier's telephone exchange service customers, pursuant to section 271(c)(2)(B)(ix) of FTA96 and applicable rules promulgated by the FCC?

RECOMMENDATION: The Commission concludes that SWBT has satisfied the requirements of this checklist item with no further action.

ITEM TEN: Has SWBT provided nondiscriminatory access to databases and associated signaling necessary for call routing and completion, pursuant to section 271(c)(2)(B)(x) of FTA96 and applicable rules promulgated by the FCC?

RECOMMENDATION: The Commission concludes that SWBT has satisfied the requirements of this checklist item with no further action.

ITEM ELEVEN: Has SWBT provided number portability, pursuant to section 271(c)(2)(B)(xi) of FTA96 and applicable rules promulgated by the FCC?

RECOMMENDATIONS: In addition to the recommendations addressed above in the **public interest** section, and the **OSS** and **performance standard** sections addressed below, the Commission recommends the following, the details of which could be established in the collaborative process. The

Commission believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. SWBT shall take corrective measures to minimize the manual intervention of its mechanized process in the provision of interim number portability (INP). SWBT shall provide at least three months of data beginning May 15, 1998, to this Commission and to the participants to ensure that CLEC customers do not lose service during the INP process;
2. The Commission has concerns relating to SWBT's delayed implementation of permanent number portability (PNP) as well. Delays in the implementation of PNP place competitors at a disadvantage, because interim solutions do not provide parity; staff, therefore, recommends that some measure be taken to address the potential for further delays in PNP implementation and the consequent detrimental effect on competition and that this issue be explored in more detail in the collaborative process;
3. SWBT shall set forth its policy on route indexing and other forms of INP, including the terms and conditions upon which it is offered;
4. SWBT shall demonstrate that it has an approved tariff providing for PNP.

ITEM TWELVE: Has SWBT provided nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3) of FTA96, pursuant to section 271(c)(2)(B)(xii) and applicable rules promulgated by the FCC?

RECOMMENDATIONS: In addition to the recommendations addressed above in the **public interest** section, and the **OSS** and **performance standard** sections addressed below, the Commission recommends the following, the details of which could be established in the collaborative process. The Commission believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. In areas where SWBT offers optional two-way extended area service (EAS) arrangements, CLECs should have the opportunity to negotiate the interconnection rates, terms, and conditions for similar two-way arrangements with SWBT. SWBT shall be required to complete calls placed by its customers to a CLEC's two-way EAS customers as local calls provided SWBT and the CLEC have negotiated appropriate compensation for such traffic;
2. In SWBT's intraLATA dialing parity docket, Commission staff had requested that SWBT be required to file "written procedures regarding carrier-neutral, administrative and other processes it will use to implement customer selection of another intraLATA toll carrier and to provide intraLATA toll dialing parity." At this time, however, SWBT has not yet provided the Commission with any guidelines or scripts SWBT plans to use for intraLATA PIC (primary interexchange carrier) selection. SWBT has merely stated that it plans to use the same processes that have been in place for interLATA PICs, and that it has no additional details of its carrier selection process for intraLATA PIC. This issue needs to be resolved before SWBT can satisfy this checklist item.

ITEM THIRTEEN: Has SWBT provided reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2) of FTA96 pursuant to section 271(c)(2)(B)(xiii), and applicable rules promulgated by the FCC?

RECOMMENDATIONS: In addition to the recommendations addressed above in the **public**

interest section, and the OSS and performance standard sections addressed below, the Commission recommends the following, the details of which could be established in the collaborative process. The Commission believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. SWBT shall be required to abide by the Commission's ruling on compensation for internet service provider (ISP) traffic in Docket No. 18082 with respect to other CLECs. ISP traffic shall be classified as local traffic and compensated at the local interconnection rates contained in the specific SWBT-CLEC agreement, unless the agreement specifically classifies ISP traffic as non-local traffic. SWBT's obligation to pay reciprocal compensation should not be conditioned on any terms, nor should the CLECs be required to seek arbitration to receive such compensation;
2. Appropriate traffic records shall be exchanged between SWBT and CLECs to facilitate the payment of mutual compensation for calls;
3. Compensation for expanded local calling service (ELCS) traffic shall be consistent with the Commission's decision in the mega-arbitration. EAS traffic, including ELCS traffic, shall be subject to the lesser of the cost-based interconnection rates or the interconnection rates in effect between SWBT and other incumbent LECs for such traffic.

ITEM FOURTEEN: Has SWBT provided telecommunications services available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3) of FTA96, pursuant to 271(c)(2)(B)(xiv) and applicable rules promulgated by the FCC?

RECOMMENDATIONS: In addition to the recommendations addressed above in the public interest section, and the OSS and performance standard sections addressed below, the Commission recommends the following, the details of which could be established in the collaborative process. The Commission believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. SWBT shall develop procedures to assure that the provision of voice mail and other unregulated services provided by a SWBT affiliate will continue uninterrupted during the transition from one local telephone provider to another. This process will necessitate coordination with SWBT's voice mail subsidiary to assure that voice mail is not disconnected, unless a CLEC or customer requests disconnection of the voice mail service. Should the voice mail subsidiary find this process unreasonable, the subsidiary can always verify with the customer or CLEC the need to continue the provision of voice mail, without undue harm to the subsidiary;
2. SWBT shall revise its procedures to ensure that all promotions of its telecommunications services are done only after adequate notification has been provided to CLECs. Adequate notification includes the provision of notice, at least thirty days in advance of the proposed implementation date for any promotion. Additionally, SWBT shall communicate with all its CLEC customers to obtain information indicating which department or principal should receive promotional material. This would ensure the timely receipt of information provided by SWBT to the department that is required to act on behalf of the CLEC for such promotions. Finally, SWBT shall provide promotional material to all CLECs in a consistent matter, regardless of whether they are purchasing resold services as a result of an interconnection agreement or tariff;
3. The Commission agrees that most of the rulings related to customer specific contracts must be

decided during the docketed proceeding. However, the FCC determined in its decision in BellSouth/South Carolina, that an RBOC must provide customer specific contracts for resale at a wholesale discount in order to meet this checklist item. To the extent SWBT wants to provide proof that it is meeting this checklist item, SWBT shall change its policy to reflect compliance with the FCC's decision;

4. At the hearing, SWBT indicated it would provide a discount on ALL promotions, regardless of duration, *e.g.*, 30-day promotions. SWBT shall provide documentation of such.

Performance Measures

RECOMMENDATIONS: In addition to the recommendations addressed above in the **public interest** and **checklist item** sections, and the **OSS** sections addressed below, the Commission recommends the following measures and requirements as a beginning point, the details of which could be established in the collaborative process.

1. The Commission recommends that the concept of broad, outcome-based performance measures be explored for interconnection, UNEs, and resale;
2. The Commission shall consider the appropriateness of monetary penalties, including discounts to rates, as a sanction for nonperformance to the extent SWBT misses due dates in the future. The monetary penalties shall be set a level sufficient to discipline non-compliance and to insure self-enforcement;
3. SWBT shall establish that it has a consistent policy and time deadlines in responding to CLEC inquiries, as well as trouble and repair reports, and should design performance monitoring to measure its responsiveness to CLECs;
4. The Commission concurs with SWBT that the required measurement for E911 is the length of time required to clear an error; however, the definition and details of the measure should be established during the collaborative process;
5. SWBT shall provide measurements with regard to the timeliness of E911 database updates to establish that the 911 service provided to the CLECs is equivalent to that which SWBT provides to itself;
6. Benchmarks shall be established and reports made on performance measurement for a period of three months that demonstrate the timeliness of the E911 database updates for the CLECs and for SWBT. Specifically, a measurement shall be developed quantifying the amount of time that elapses between the time a CLEC's customer records are received by SWBT until the time these records have been accepted or rejected from the E911 database. A corresponding analogous measurement showing the timeliness of SWBT's own updates shall be reported for the same three month period;
7. SWBT shall initiate a policy to conduct traffic studies by obtaining busy hour data to know how a trunk group is performing and to know whether that trunk group needs augmenting. As a part of the traffic study, SWBT shall obtain peg overflow and usage counts, to determine the amount of lost traffic into a CLEC's switch from both tandems and end offices. These studies shall be made available to all interconnecting CLECs;
8. SWBT shall provide at least three months of data on all performance measures;
9. SWBT shall establish an Internet site where it will post all of its historical performance measurement reports for non-restricted use by interested parties on a monthly basis;
10. The Commission generally agrees with the supplementation as recommended by the

Department of Justice (DOJ). SWBT shall provide those additional performance measures to CLECs, as well as additional measures established by the Commission, FCC, or the DOJ. Once established, all CLECs shall be allowed to amend or MFN into the supplemented performance measures;

11. The following specific measures shall be established: (1) performance measures related to the access to be offered by SWBT to enable CLECs to combine UNEs; (2) speed of processing requests to accessing poles, conduits, and rights-of-way; and (3) number of days to complete physical collocation facilities;
12. SWBT should establish the following measures: (1) a measurement which would include the average delay days for all SWBT caused missed due dates; and (2) the percentage of all SWBT caused missed due dates greater than 30 days. The Commission also believes that a measure reflecting coordinated conversions should be developed. SWBT shall discuss with CLECs the development of performance measurements that relate to premature disconnect and the coordinated customer conversion process and jointly develop measurements that would enable both parties to track parity in the process;
13. Because the current process for updating directory listings activity for CLECs and independent companies are manual, the Commission concludes that SWBT add the following measures: (1) directory listings database update completion interval; (2) directory listings database update interval; and (3) directory listings electronic interface availability;
14. Because the process employed by SWBT for Operator Services (OS) and Directory Assistance (DA) is the same as that used by CLECs and other independent companies, the measurements proposed by SWBT for OS/DA should provide adequate information making the additional measures unnecessary to ensure parity for this category. The measurements provided in this category shall include: (1) Grade of Service; and (2) Average Speed of Answer. Furthermore, the measures shall be reported aggregated for SWBT and for CLECs;
15. Measures shall be established to assure parity in the provision of interim number portability;
16. The Commission finds that SWBT must provide measurements for interconnection trunks for all CLECs to assure nondiscriminatory treatment. The measurements shall include: (1) Percent Trunk Blockage; (2) Common Transport Trunk Blockage; (3) Distribution of Common Transport Trunk Groups Exceeding 2%; (4) Percent Missed Due Dates; and (5) Average Trunk Restoration Interval along with the standard deviation. The measurements provided shall include data for individual CLECs, all CLECs, and SWBT;
17. SWBT is contractually required to file performance measures for different types of unbundled loops and resale services in the approved AT&T and MCI interconnection agreements. As an additional requirement, the performance measures related to DS-1, DS-3 and higher capacity loops and dedicated transport should be tracked separately;
18. "Average Time to Return Firm Order Commitment" shall also include SWBT's own internal performance in order to compare it with its performance provided to CLEC;
19. SWBT shall provide a measurement of the performance it provides to its own customers as related to "percentage of Trouble Reports Within 10 days of Installation" and "Percentage of Trouble Reports Within 30 Days of Installation;"
20. SWBT shall include an additional measure "Delayed Orders Cleared After 30 Days." This measurement shall be reported for loop by separate capacity category;
21. SWBT shall report comparative data on NXX loaded and tested prior to local exchange routing guide (LERG) effective date, and Mean Time to Repair for NXX Troubles;
22. SWBT's Network Performance measures shall include Ratio of Calls Blocked to Calls Attempted;
23. SWBT should develop a process for simulation modeling for those measures for which actual

results are not available or are so limited that a statistical comparison is not feasible;

24. SWBT shall implement TCG's suggestions as far as the kinds of benchmarks to establish to measure SWBT's performance in the area of directory assistance and operator call completion;
25. SWBT's performance data shall be further disaggregated, consistent with the discussions of the Office of Public Utility Counsel (OPC) and the testimony of SWBT witness Dysart;
26. The Commission recommends that a measure reflecting coordinated conversions should be developed. SWBT shall work with the CLECs and Commission Staff to develop measures relating to premature disconnect and the coordinated customer conversion process and develop measurements that would enable all parties to track parity;
27. The issue of auditing shall be addressed further in the collaborative process between SWBT, the participants, and Commission Staff. SWBT must allow CLECs to audit the underlying performance data used in calculating the required measure to provide CLECs the ability to satisfy any concerns that the performance measures "mask" discriminatory treatment, *i.e.*, disparate treatment in a particular exchange. As an initial matter, the Commission believes it is appropriate for the requesting CLEC to bear the costs associated with such an audit. However, if the CLEC demonstrates that SWBT has consistently provided discriminatory and/or lower grade service than it provides to itself, SWBT is required to refund such fees. If necessary, the post-interconnection dispute process may be used to resolve disputes regarding the payment of such fees. In such a process, it may be appropriate to consider attorneys' fees and litigation costs to be part of the overall audit costs;
28. Performance penalty issues need to be resolved. Issues for the collaborative process include the type of penalty, level of penalty, and the appropriateness of any necessary safeguards to protect CLECs from sporadic performance and SWBT from random fluctuations. For any measure, when SWBT's performance substantially deviates from parity, *e.g.*, more than one standard deviation for three consecutive months, the Commission recommends that a root cause analysis be performed to determine the cause of the disparity. In other words, SWBT must investigate exceptionally good and exceptionally bad performance results;
29. In recognition of the New York Public Service Commission's ruling in Bell Atlantic's Section 271 docket and the concerns raised by participants in this docket, the Commission believes that the performance penalty structure in the AT&T and MCI interconnection agreements with SWBT, which was largely negotiated, may not be adequate to assure nondiscriminatory treatment. Instead, during the collaborative process, proposals relating to a reduction in resale/UNE/interconnection rates should be considered if, prospectively, the Commission determines that SWBT has failed to meet the performance requirements, or engaged in discriminatory practices against CLECs;
30. The Commission recommends that additional safeguards be considered if performance penalties are determined to be insufficient to restrain anticompetitive behavior after SWBT obtains § 271 relief. Such a procedure may allow the Commission to issue a cease and desist order affecting SWBT's ability to accept new in-region interLATA customers if the Commission determines that SWBT has provided sub-standard and/or discriminatory service to CLECs, such that CLECs do not have a meaningful opportunity to compete in local markets. This issue is more broadly discussed in the public interest section;
31. SWBT shall be required to allow a CLEC that was not a party to the mega-arbitration to include those performance measures while allowing the CLEC to raise new issues that were not arbitrated or negotiated during the mega-arbitration hearing through further negotiation or arbitration and shall explore development of a tariff containing performance measures and public availability of performance measure data;
32. Consistent with the attachment-by-attachment MFN philosophy, SWBT shall allow a CLEC

that was not a party to the mega-arbitration to adopt the performance measures without having to adopt the separate and distinct provision on performance penalties;

33. SWBT shall provide all the performance data required by its interconnection agreements with AT&T and MCI, including the average response time for preorder interfaces, provisioning accuracy, average time to return firm order commitments (FOCs), mean time to return service, order process percent flow-through, LSC speed of answer, billing accuracy, billing timeliness, or any measures with respect to UNEs or design services.

Operations Support Systems (OSS)

RECOMMENDATIONS: In addition to the recommendations addressed above in the **public interest**, **checklist item**, and the **performance standard** sections above, the Commission recommends the following, the details of which could be established in the collaborative process. The Commission also includes a brief discussion relating to the relationship between interim and permanent interfaces to provide some context for the specific recommendations.

Relationship between interim and permanent interfaces:

There are a number of interim and permanent OSS interfaces discussed in these comments. In particular, at least for CLECs willing to move to an EDI (Electronic Data Interexchange solution), EASE (Easy Access Sales Environment) is an interim interface for resale and UNE switch/port combinations, LEX (Local Service Request Exchange System) is an interim solution for resale and UNE orders, VERIGATE (Verification Gateway) and DataGate are interim measures for preordering functions. SWBT's ultimate obligation is to develop a real-time, interactive, EDI gateway based on national standards.

As the final stages of EDI development are in progress, SWBT's § 271 relief should not be rejected on this issue if certain conditions are met indicating that the OSS systems in place meet the requirements set out by the Commission and the FCC. These conditions include the following:

1. SWBT's interim measures provide flow-through and are modified as discussed in the specific recommendations contained herein;
2. SWBT continues to develop its EDI interface in good faith; this issue should be explored in more detail during the collaborative process. (Some form of adjustment may be necessary to offset the necessity of CLECs to undertake dual entry prior to EDI development being completed to the Commission's satisfaction, if SWBT does not meet its implementation dates for EDI development. Potentially, an interim discount on SWBT's electronic service order charge may be appropriate.); and
3. Sufficient procedures are in place to transition from interim measures to permanent solutions.

Specific Recommendations:

1. OSS shall be addressed in the collaborative process. The Commission believes implementation of both the spirit and letter of these recommendations would lead to an affirmative answer on OSS.
2. SWBT shall establish that all of its OSS systems for pre-ordering, ordering, provisioning, maintenance and repair, and billing are at parity;

3. SWBT shall establish that all of its electronic OSS systems for pre-ordering, ordering, provisioning, maintenance and repair, and billing are at parity and provide flow-through without the necessity of manual intervention;
4. SWBT shall conform its technical documents to meet the LEX and EDI interfaces. SWBT's LEX and EDI interface, at the time of the hearing, did not sufficiently follow the technical documentation provided by SWBT to CLECs;
5. SWBT shall modify LEX to better integrate LEX with VERIGATE, a pre-ordering apparatus. SWBT should develop the capability necessary to allow more efficient order preparation, beyond "Cut and Paste" functionality, in order to prevent a CLEC's sales representative from re-keying certain information multiple times when it is not necessary. SWBT's LEX system, at the time of the hearing, could not be used in a manner reasonably comparable to the EASE interface used by SWBT for its retail operations;
6. SWBT shall undertake further development of LEX and EDI to achieve the flow through capabilities for both UNE and Resale orders. LEX and EDI's electronic flow through, at the time of the OSS demonstration, was not sufficiently comparable to that of SWBT's EASE system to provide nondiscriminatory access to CLECs. Further flow through capability is necessary. SWBT shall provide data on the rejection rate for orders processed to demonstrate the new flow through capability achieved through Phase I implementation;
7. SWBT shall demonstrate that improved flow through capability enables SWBT's OSS to handle commercial volumes;
8. SWBT shall provide further explanation regarding the disparity in EASE flow through rates in order to ascertain whether EASE is provided in a nondiscriminatory manner;
9. SWBT shall complete the development of EASE for UNE switch/port combinations;
10. Further review of SWBT's OSS training is necessary to determine whether SWBT is providing sufficient training for CLECs to effectively use the interfaces provided by SWBT;
11. Delays relating to LEX and EDI batch processes need to be reduced and transitioned to real time. SWBT shall demonstrate that such delays have been reduced;
12. SWBT needs to develop the procedures to provide timely, accurate information regarding order errors, jeopardies, and CLECs' access order status information;
13. SWBT needs to implement adequate safeguards to assure timely, efficient, parity performance for the manual orders processed by the LSC and CLEC questions directed to LSC. The Commission, therefore, recommends that this issue be explored in more detail during the collaborative process among SWBT, the participants, and Commission Staff. Further review of performance measures may be necessary to provide such a safeguard;
14. SWBT shall either improve the preordering interfaces available to CLECs to provide sufficient access to customer information and/or clarify the record to show that CLECs have parity access to customer service records, *e.g.*, ISDN, complex services and design services;
15. To the extent SWBT's access to the PREMIS database is at the customer service representative level, SWBT shall provide sufficient access to that database system's information and functionality in order to provide parity access;
16. SWBT shall provide access to SORD (Service Order Retrieval Distribution) and LFACS (Local Facilties Access System) at cost-based rates, terms, and conditions. As discussed previously, SWBT would have to provide training necessary to allow CLECs obtain parity access to SORD and LFACs;
17. SWBT shall be required to demonstrate, by providing at least three months of data, that it is providing CLECs with service that meets the performance standards established in this proceeding and in its interconnection agreements;
18. The Commission finds that SWBT does not make available the ability for a facilities-based

CLEC to supplement pending service orders or receive timely jeopardy notifications, error notifications, or workflow confirmations. SWBT must either make this capability available to CLECs electronically or demonstrate that SWBT's customer service representatives do not have such access;

19. To provide necessary notifications, SWBT shall fully develop the jeopardy notification function into its EDI interface. This development should also be incorporated into the Order Status Toolbar function;
20. Although fax rejects may be appropriate when a CLEC provides its orders via fax, SWBT shall provide an electronic means for such notification when a CLEC uses an electronic means to place its orders with SWBT;
21. SWBT does not provide data as to the amount of time it takes SWBT to process and transmit reject notifications to CLECs. Moreover, SWBT could not provide specific goals and procedures in response to questioning from the Commissioners so actual performance could be measured against a benchmark. SWBT shall implement such goals and procedures so CLECs can regularly receive this information timely enough to correct such errors without affecting customer service. Such goals and procedures provide a CLEC with the ability to smoothly convert a customer to its service;
22. SWBT must make clear to CLECs the effect of the various stages of an order's "completion" to avoid confusion. To the extent this issue is one of communication, this issue can be addressed in the policy manual discussed in the public interest section of these comments;
23. The Commission, like the FCC, believes that actual commercial usage is the most probative evidence concerning a system's ability to handle large commercial volumes. The Commission recommends, to the extent there is no actual commercial usage or third party testing, alternative means for assessing system performance be developed in the collaborative process. For example, as greater flow-through is developed, commercial volume concerns may be eased as the representative hours necessary to input orders directly into SORD will be lessened. However, even after the potential manual "bottleneck" issue is resolved, there may remain a need to stress test SWBT's OSS systems before an affirmative recommendation is made on this issue;
24. A record on billing issues should be developed further during the collaborative process. The FCC determined that this information is necessary because "competing carriers that use the incumbent's resale services and unbundled network elements must rely on the incumbent LEC for billing and usage information. The incumbent's obligation to provide timely and accurate information is particularly important to a competing carrier's ability to serve its customers and compete effectively." A BOC must also provide detailed evidence to support its claim that it is providing billing on terms and conditions that are nondiscriminatory, just and reasonable. This information should include measures that compare the BOCs performance in delivering daily usage information for customer billing to both its own retail operation and that of competing carriers;
25. SWBT must resolve the double-billing and other billing issues raised during this proceeding and bring forth proof that such problems have been adequately addressed;
26. SWBT shall either limit requirement that a single CLEC obtain multiple OCNs (operating company numbers) or AECNs (alternate exchange company number) or demonstrate a necessity for such requirement;
27. SWBT shall provide CLECs with sufficient definition or information to decipher the downloads of information that a CLEC needs to validate addresses, determine calling scope, and determine feature availability without having to access SWBT's systems;
28. SWBT shall provide parity access to consolidated CSRs for business customers that have more

than 30 lines or that have any design services such as Centrex. SWBT must enhance the ability of its interfaces to handle these order types or demonstrate that parity is provided at this time;

29. SWBT shall demonstrate that its back-end systems are operationally ready, to assure performance parity between CLECs and SWBT's retail operations for POTS (plain old telephone service) order completion, FOCs, installation intervals, trouble reports, design services, billing accuracy, or billing timeliness.

Section 272 Compliance

SECTION 272 COMPLIANCE: Pursuant to section 271(d)(3)(B), has SWBT demonstrated that the requested authorization will be carried out in accordance with the requirements of section 272?

RECOMMENDATIONS: The Commission recommends the following, the details of which could be established in the collaborative process. The Commission believes implementation of both the spirit and the letter of these recommendations would lead to compliance with Section 272.

1. Although SWBT has established a separate affiliate to provide interLATA services in Texas, the actual corporate structure must be clarified. The Commission cannot determine from the record which SBC subsidiary and/or d/b/a will be used to provide interLATA services in Texas. SWBT shall supplement the record with the necessary information;
2. It is the Commission's position that the independence and separation of the SBLD board and officers from SWBT is not absolutely clear in the record. The record on this issue shall be further developed and clarified so that a determination can be made as to whether SBLD's officers, directors, and employees are separate from SWBT and its corporate chain of command;
3. SWBT's postings on the internet do not clearly delineate the services which are provided by SWBT to SBLD, the identified interLATA affiliate. The internet postings shall clearly identify this information. Additionally, the internet postings shall be revised to indicate which of the services are provided by SWBT to SBLD for Texas, for Oklahoma, or any other state served by the three SBC BOCs, or services provided by SWBT to support SBCS in its other activities outside the SWBT service areas;
4. SWBT shall make available public access to information on transactions between the BOC and the interLATA affiliate at the BOC's headquarters. After the hearing, SWBT in an affidavit reported it would move the records to San Antonio, Texas during the month of June 1998. SWBT should file a follow-up affidavit once the records are available in San Antonio. The Commission must have proof that the records will remain available in San Antonio pursuant to the FCC's order;
5. SWBT shall post on the internet a written description of the asset or service transferred along with the terms and conditions;
6. There is insufficient information to evaluate if transactions are fairly and accurately valued. SWBT shall provide such additional information, so the Commission can determine which of the posted services and assets would be available on an equal pricing basis to a competitor of SBLD;
7. Transactions between February 1996 and the date of approval to initiate interLATA services shall be disclosed and made subject to "true-up;"
8. SWBT shall provide additional information to enable the Commission to evaluate if transactions are arms-length between the affiliates;
9. SWBT shall limit its use of "CONFIDENTIAL" and "PROPRIETARY" classifications to those

transactions that meet the FCC guidelines for such protections;

10. The record shall be developed further as to SWBT's practices regarding the use of "CONFIDENTIAL" and "PROPRIETARY" restrictions on documents. If contracts between SWBT and its interLATA affiliate are improperly so marked, then, the Commission's position is that SWBT does not meet the public disclosure requirements of Section 272;
11. The audit report to Texas must report on transactions from all three SBC BOCs, summarizing the total support services from each BOC, reporting the specific services received by the long distance affiliate from each BOC, and reporting on the allocation of expenses within the SBCS organization by subsidiary and by d/b/a title;
12. The Commission has concerns regarding marketing, but recognizes the FCC's decision in BellSouth/South Carolina. The Commission, nonetheless, has concerns that the strong recommendation of its affiliate by SWBT and the warm-hand-off to the affiliate would not pass any arms-length test. If a customer truly does not readily state a long distance company choice, then random assignment of a carrier is preferable.

The following Commission Staff assisted in this proceeding:

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PUC PROJECT NO. 16251

INVESTIGATION OF SOUTHWESTERN BELL TELEPHONE COMPANY'S ENTRY INTO THE TEXAS INTERLATA TELECOMMUNICATIONS MARKET	§ § § § §	**PUBLIC UTILITY CO OF TEXAS**

ORDER NO. 25
ADOPTING STAFF RECOMMENDATIONS;
DIRECTING STAFF TO ESTABLISH COLLABORATIVE PROCESS

Comments and Recommendations

At the May 21, 1998 open meeting, the Commission discussed staff's recommendations on Southwestern Bell Telephone Company's (SWBT's) notice of intent to file section 271 application for interLATA authority in Texas. The Commission adopted, as modified, staff's recommendations. Attachment 1 contains the recommendations adopted by the Commission.

Collaborative Process

Also at the May 21, 1998 open meeting, the Commission directed the staff to establish a collaborative process to address all the issues outlined by Commissioners and staff, as contained in the attached recommendation. The goal of the collaborative process shall be to institute workable solutions to the issues outlined by Commissioners and staff, including a series of specific commitments and obligations by SWBT, and to review data obtained during the process. At the conclusion of the collaborative process, SWBT shall supplement the record to show its compliance with the requirements of section 271. The successful conclusion of the collaborative process and supplementation of the record would allow the Commission to reach a positive recommendation to the FCC on SWBT's application.

A subsequent order shall detail the specific procedures and schedule for the collaborative process.

SIGNED AT AUSTIN, TEXAS the _____ day of _____ 1998.

PUBLIC UTILITY COMMISSION OF TEXAS

_____
PAT WOOD, III, CHAIRMAN

JUDY WALSH, COMMISSIONER

PATRICIA A. CURRAN, COMMISSIONER

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Interconnection Contract Negotiations Between AT&T OF THE MOUNTAIN STATES, INC., and U S WEST COMMUNICATIONS, INC., Pursuant to 47 U.S.C. Section 252.	DOCKET NO. 96-087-03
In the Matter of the Petition for Arbitration, Consolidation, and Request for Agency Action of MCIMETRO ACCESS TRANSMISSION SERVICES, INC., Pursuant to 47 U.S.C. § 252 (b) of the Telecommunications Act of 1996.	DOCKET NO. 96-095-01
	ORDER ON RECONSIDERATION

ISSUED: June 9, 1998

BY THE COMMISSION:

We consider and clarify herein certain issues raised in Petitions for Reconsideration filed by parties to the captioned arbitrations which seek reconsideration of decisions made by the Commission in an Arbitration Order issued April 28, 1998.

We accept and approve, pursuant to USC 47 § 252(e) but subject to this Order on Reconsideration, all provisions of, respectively, a fully executed Agreement for Local Wireline Network Interconnection and Service Resale ("interconnection agreement") between AT&T of the Mountain States, Inc. and US West Communications, Inc. ("USWC"), as filed with the Commission on May 27, 1998, and a separate fully executed interconnection agreement filed by USWC and MCImetro Access Transmission Services, Inc. ("MCI"), with the Commission on May 28, 1998. We approve all provisions of the interconnection agreements filed on the above dates that comport with the Arbitration Order. We reconsider and clarify three issues in this Order. Those issues include Issue 3.-.31-- Shared Transport, Issue 7.-.39 -- Unbundled Network Element Platform and Issue 7.-.41 -- Operational Support Systems ("OSS"). With regard to the latter two issues, we order the parties, in accordance with ¶ 17.1 of the interconnection agreement, to file amendments to the interconnection agreement reflecting the following policy decisions we make on reconsideration.

At the outset, we acknowledge our failure to recognize in the Arbitration Order the Order on Petitions for Rehearing issued October 14, 1997 by the Eighth Circuit Court of Appeals which vacated CFR § 51.315(b). [1] Our Arbitration Order mistakenly concluded in part that the "Eighth Circuit's retention of 47 CFR § 51.315(b) forms a basis

[1] Iowa Utils. Bd. v. FCC, Nos. 96-3321 etc., Order on Petitions for Rehearing (8th Cir. October 14, 1997). The Arbitration Order only considered the Eighth Circuit's initial decision issued July 18, 1997 which did not vacate 47 CFR § 51.315(b). That regulation states: "Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines."

for concluding that shared transport is required by law." In vacating § 51.315(b), which prevented an incumbent from separating network elements it currently combines, the Eighth Circuit held that § 251(c)(3) of the 1996 Act does not prohibit an incumbent from separating network elements that are already combined within its network before furnishing them to new entrants. It further held that an incumbent is not required to perform any recombination of elements on behalf of an entrant. Accordingly, we recant from reliance on § 51.315(b) as a basis for prohibiting USWC from separating or recombining network elements.

Issue 3.-.31-- Shared Transport

We concluded in the Arbitration Order that AT&T/MCI should be able to share common transport routes including end office to end office links that predominantly carry USWC traffic. USWC asks that we reconsider that decision and instead require USWC to offer each of the network elements which comprise local interoffice transport on an unbundled basis. It argues that shared transport is not a network element but rather a finished service consisting of combinations of switching and interoffice transport elements. USWC insists that CLEC access to USWC's local interoffice network must be rate-configured such that a CLEC must separately purchase end-office switching with custom routing, tandem switching with custom routing, and dedicated interoffice transport, and then combine these elements itself. In sum, USWC argues that the 1996 Act and Eighth Circuit's decision established that the Commission may not permit AT&T/MCI to purchase shared transport as an unbundled network element because it constitutes a combination of two or more elements. AT&T/MCI, in contrast, support the conclusion drawn in the Arbitration Order that shared transport is an unbundled network element.

In the Arbitration Order, we consolidated shared transport with the unbundled network element platform for decision because shared transport was the only unbundled network element under consideration that incorporated a combination of essential local interoffice facilities. Shared transport was the only unbundled network element combination for which ample evidence was entered on the arbitration record. On reconsideration, we will not reverse the shared transport decision made in the Arbitration Order. We reaffirm our concurrence with conclusions reached in the FCC's Shared Transport Order and current FCC rules. [2] We further reaffirm our finding that

[2] The FCC concluded in its Local Interconnection Order that "incumbent LECs are obligated under section 251(d)(2) to provide access to shared transport....as an unbundled network element." The Eighth Circuit upheld FCC rules found in 47 CFR § 51.319 which itemize and define seven unbundled network elements incumbent LECs must make available, including interoffice facilities. The FCC defines interoffice transmission facilities in 47 C.F.R. §51.319(d)(1) as "incumbent LEC transmission facilities dedicated to a particular customer or carrier, or

AT&T/MCI's ability to provide the services they seek to offer would be impaired insofar as the transport and routing methods proffered them by USWC are unduly prejudicial relative to the method USWC uses to route and transport its own traffic. [3] We found USWC's local interoffice transport proffer to be discriminatory, inefficient and contrary to § 251(d)(2)(B) of the 1996 Act as reflected in 47 CFR § 51.309(a), § 251(c)(3) as reflected in 47 CFR § 51.313(b), § 251(c)(2)(C) and UCA § 54-8b-2.2(1)(b)(ii). Finally, we exercised the jurisdiction conferred upon us by UCA § 54-8b-2.2 (5) to resolve issues necessary for the competitive provision of local exchange services.

USWC also argues that shared transport will act to deter interoffice facilities investment, thus conflicting with a legislative policy favoring facilities-based competition. In the Arbitration Order, we expressed a policy preference to avoid duplicative capital investment made at the expense of capitalizing technological innovation or distorting CLEC investment strategy, particularly with regard to interoffice transport investment where technology solutions exist to vastly improve the capacity of sunk fiber investment. Given evidence of circuit-switched network congestion and nascent deployment of network architectures that would mitigate that congestion by off-loading data traffic, we found cause to minimize the societal cost for transmission and routing investments used to provide existing and new public telecommunications and information service products.

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shared by more than one customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers." [emphasis added]. Finally, we note that the Eighth Circuit on October 30, 1997 denied a USWC Motion for Stay of the FCC's Shared Transport Order. See Southwestern Bell et al v. FCC; Nos. 97-3389 etc.

[3] Those methods included tandem-routing all AT&T/MCI traffic which we found likely to decrease interconnection service quality by exacerbating call blocking. We further found that limiting AT&T/MCI's interconnection method to dedicated transport and routing facilities would increase the financial and administrative cost for AT&T/MCI to an amount greater than the cost of facilities shared by joint users, including USWC. We concluded both arrangements were contrary to law.

Issue 7.-.39 -- Unbundled Network Element Platform

In briefs, the parties exhibit polar interpretations of § 251(c)(3) of the 1996 Act. [4] USWC seeks clarification of whether the Arbitration Order requires USWC to provide other unbundled network element platforms besides shared transport. Extending the logic underlying the Eighth Circuit's vacation of § 51.315(b), USWC argues it is contrary to § 251(c)(3) to allow AT&T/MCI access to its network elements on a bundled as opposed to an unbundled basis. USWC interprets § 251(c)(3) as requiring it to provide access to network elements only on an unbundled (as opposed to a combined) basis. Thus, AT&T/MCI would be precluded from purchasing any assembled platform(s) of combined network elements (or any lesser existing combination of two or more elements) in order to offer competitive services. USWC asserts that to permit acquisition of already combined elements at cost-based rates for unbundled access would obliterate the distinction in subsections §§ 251(c)(3) and (4) between access to unbundled network elements on the one hand, and the purchase at wholesale rates of an incumbent's retail services for resale on the other. USWC avers that the unbundled network element platform price established by a forward looking economic

[4] § 251(c)(3) imposes a duty on incumbent local exchange carriers to "provide, to any requesting telecommunications carrier for the provision of a telecommunications service, non-discriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable and non-discriminatory ..... . An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." In vacating 47 C.F.R.§ 51.315(b), the Eighth Circuit took a literal and narrow view of network unbundling as evidenced by its conclusion that "Section 251(c)(3) requires an incumbent LEC to provide access to the elements of its network only on an unbundled (as opposed to a combined) basis". The Court reasoned that the Act "indicates that the requesting carriers will combine the unbundled elements themselves; the Act does not require the incumbent LECs to do all of the work. Moreover, the fact that the incumbent LECs object to this rule indicates to us that they would rather allow entrants access to their networks than have to rebundle the unbundled elements for them."

cost model would be less than the wholesale price for its resale products based on an avoided retail cost standard. Finally, USWC asserts that the Eighth Circuit "has established that AT&T/MCI's entry strategy is contrary to the Act and thus unlawful."

AT&T/MCI argue on reconsideration that § 251(c)(3) mandates that access to network elements for purposes of recombination be provided on non-discriminatory terms and conditions. That mandate, they assert, raises issues of parity with regard to the manner of access USWC itself uses to self-provision network elements. On a presumption that this Commission concurs in the Eighth Circuit's reading of § 251(c)(3) in the Order on Rehearing,[5] AT&T/MCI ask us to decide specifically how the interconnection agreement will provide AT&T/MCI access to U S WEST's network to accomplish the combination of network elements USWC believes it must separate, and, under what terms and conditions (including price) elements will be available. As characterized by AT&T/MCI, USWC's response to the vacation of C.F.R.§ 51.315(b) is to "vandalize its network by ripping apart network elements that new entrants order." That characterization is far from hyperbole as evidenced by USWC's Petition for Reconsideration. AT&T/MCI accuse USWC of seeking to impose artificial costs and compliance with discriminatory business processes attendant to the separation and reassembly of previously assembled network elements. AT&T/MCI insinuate that unbundling to USWC may mean an anti-competitive disassembly of network elements that do not necessarily have to be disassembled to transact a purchase of essential facilities by AT&T/MCI. Finally, AT&T/MCI allege that separation will cause outages when consumers physically transfer service to a CLEC.

[5] The United States Supreme Court will hear oral argument in October, 1998 on appeal of the Eighth Circuit's decision that incumbents are not required to recombine unbundled network elements for competitors (No. 97-830). Other state and federal regulators disagree with the Eighth Circuit's reading of § 251(c)(3). See for example, April 6, 1998 letter from Joel Klein, DOJ, Antitrust Division to John O'Mara, Chairman, New York Public Service Commission addressing, among other issues, the "Eighth Circuit invalida[tion of] the FCC rule forbidding incumbent LECs from separating unbundled elements that are currently combined, except on the request of the carrier purchasing those elements. We believe the Eighth Circuit's decision rests on an incorrect reading of section 251(c)(3) of the Act, and we have asked the Supreme Court to reverse this aspect of the decision. At the present time, however, section 251(c)(3) has been construed so as to not require incumbent LECs to provide pre-assembled combinations of elements under federal law." Also see Pre-Filing Statement of Bell Atlantic- New York, dated April 6, 1998, before the New York Public Service Commission in Case 97-C-C271 [In the matter of Petition of New York Telephone Company for Approval of Its Statement of Generally Available Terms and Conditions pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry pursuant to Section 271 of the Telecommunications Act of 1996], wherein Bell Atlantic agrees to provide CLECs in New York "combinations of network elements, and the complete Unbundled Network Element Platform to provide CLECs with residential and business POTS service and residential and business Basic Rate Interface ISDN service."

USWC acknowledges that the Eighth Circuit, in interpreting § 251(d)(3) of the 1996 Act, preserved state authority and state commission jurisdiction over implementation of § 251. AT&T/MCI observe that the primacy of state authority was expressly preserved by the 1996 Act,[6] asserting that USWC endorses or disparages that preservation as it serves its business objectives in state and federal regulatory proceedings. In this instance, Utah law must be consistent with § 251 of the Act or it is preempted by federal law, according to USWC. USWC asserts that any state law which purports to require it to leave unbundled network elements bundled, or to provide network elements on a combined basis is unlawful and contrary to the Act. Citing UCA § 54-8b-1.1(6) & 54-8b-2.2, it argues that there is no provision in Utah law that requires it to leave unbundled network elements assembled or to recombine elements, asserting that the 1995 Utah Reform Act, like the Federal Act, only requires that it unbundle network elements for sale to CLECs.

In stark contrast, AT&T/MCI argue that Utah law complements the purposes of the federal Act and furthers legislative policy objectives. They assert that UCA §54-8b-2.2(1)(b)(ii) grants the Commission statutory authority to prevent USWC from separating network elements when ordered in combination by a CLEC. AT&T/MCI assert that if USWC, in providing itself a finished local exchange service, does not separate unbundled network elements and subsequently recombine them for a new customer, but rather uses the same combined network elements as part of that customer's new telecommunications service, then it is discriminatory and unreasonable for USWC to impose those requirements and costs on AT&T/MCI as a prerequisite to furnishing them network elements. We agree.

[6] See for example 47 USC § 261(c), § 251(d)(3) and § 252(e)(3).

AT&T/MCI rightfully assert that the interconnection agreement contemplates network element combinations. In the arbitration record, however, AT&T/MCI neither itemized network element combinations nor defined an unbundled network element platform other than shared transport. They alleged that unspecified elements may not require separation when ordered by a CLEC to provide telecommunications service. With regard to the availability of the unbundled network element platform, we find switched access tariffs instructive insofar as they have historically defined parameters of network functionality for exchange access to originate and terminate telecommunication services. Access rate designs establish a backdrop for defining which network elements, with their attendant software-enabled self-diagnostics and control channel capability, are logically combined to form an unbundled network element platform. [7] We conclude that unbundled network element platforms are required by state and federal law when the platform represents a discrete set of hardware and software components engineered, systematically, to provide network features, functions and capabilities used by an incumbent to provide certain service types, or for example, service in a geographic area, or to some or all customer classes. We find that AT&T/MCI should not be precluded from launching products from unbundled network element platforms.

We shall define the unbundled network element platform as including not only shared transport but other combinations of network elements required by a CLEC where the CLEC directly provides at least one or more of the essential facilities or services (as defined by Commission rule R746-348-7) necessary to provide a finished service. Regarding the issue of access to unbundled network element platforms for the purpose of combining discrete network elements, there is insufficient evidence on this record for us to decide the issue. Access to unbundled network element issues will be decided by order in Docket No. 94-999 -01 [*In the Matter of Collocation and Expanded Interconnection*], Phases 3A and 3C, and to some degree by rule in Docket No. 97-R365 -01 *[Intercarrier Service Quality]* which address collocation and Operational Support System ("OSS") issues. Pending the conclusion of those dockets, as an interim policy matter we order USWC to provide AT&T/MCI unfettered access to network points of interconnection, including collocation space, feeder/distribution interfaces and network interface device protectors for the purpose of allowing AT&T/MCI to combine network elements.

[7] On this point, we seek evidence regarding the degree to which disassembly of essential facilities affects the network element, system and service layers of the OSS infrastructure, particularly where the underlying network elements and/or attendant OSSs are Telecommunications Management Network ("TMN")-compliant assets.

We addressed cost aspects associated with the combination of disassembly or unbundled network elements in the Arbitration Order. We found therein and reaffirm here, in concept, that:

> "separating and recombining unbundled network elements ordinarily combined in USWC's network is illogical, inefficient and violates state and federal law. We find it illogical, inefficient and discriminatory for USWC to use available combinations of elements to provide its own services, while requiring entrants to incur the delay and expense of separating and recombining them. Signaling networks and integrated software-defined operational support and network administration systems render shared transport a logically integrated system, or platform of network elements performing transport and routing functions. These integrated systems are not rationally disassembled or easily reassembled. We find that such action by USWC would impose costs on competitive carriers that incumbent LECs would not incur in violation of § 251 (c)(3) of the 1996 Act."

§ 251(c)(3) of the 1996 Act clearly conveys to AT&T/MCI a right to procure combinations of network elements from an incumbent on non-discriminatory terms. We find the non-discrimination mandate of § 251(c)(3) compelling with regard to network element combinations. We find on efficiency, equity and parity grounds that no disassembly and reassembly of network elements purchased by AT&T/MCI should occur if the cost of disassembly and recombination would not similarly be incurred by USWC in providing the same or substitutable service. Stated differently, if, from a network operations and control perspective, no physical disconnection of hardware or software elements is required within a given combination of elements to fulfill a new, change or disconnect service order, then no disconnection or disassembly within that combination should occur for AT&T/MCI. We include any software-executed line changes such as dial tone activation or deactivation, or changes to features, functions and capabilities that tend a line in that judgment. Network elements ordinarily combined in USWC's service provisioning process should not be unnecessarily unbundled and reassembled in order for AT&T/MCI to provide service if USWC would not similarly incur the same unbundling and reassembly process. However, our decision is intended to relieve AT&T/MCI from incurring the cost of reassembly only when USWC itself would not incur that cost. If USWC necessarily incurs a cost burden for disassembly and recombination, then AT&T/MCI must similarly perform any necessary recombination of network elements forming a platform.

We find credence in AT&T/MCI's argument that the act of separating and reconnecting network elements heightens the possibility of service transfer errors and delays the advent of competitive market benefits. We find cause to minimize public inconvenience as service is migrated between competitive providers. For that reason, any disaggregation of network elements by USWC must in our view be an essential task necessary for the connection of network elements controlled by USWC with network elements controlled by AT&T/MCI. The disaggregation must

be an essential and necessary task requisite to providing a finished service.

In the Arbitration Order, we found that the functionality and capabilities of a "network element" are subsumed in the statutory definition of the term. The Eighth Circuit sustained the FCC rule[8] which defines a network element as including the functionality of the facilities and equipment comprising an incumbent's network. The House/Senate Committee of Conference added the definition of network element to section 3 of the Communications Act. The Joint Conference Report defined network element "to describe the facilities, equipment and the features, functions and capabilities that a local exchange carrier must provide". Like the Joint Conference Report, Commission Rule R746-348-2 defines network element to mean "the features, functionalities and capabilities of network facilities and equipment used to transmit, route, bill or otherwise provide public telecommunications service." The same rule defines "unbundling" to mean the disaggregation of facilities and functions into multiple network elements and services that *can be* individually purchased" by a CLEC. The plural reference to facilities and the use of the permissive term "can", as opposed to a mandatory connotation, conveys the permissive orientation we held in promulgating terms for access to essential network facilities. Section 7 of the above-cited rule defines essential facilities and services in Utah which shall be used to demarcate an unbundled network element platform. It requires telecommunications corporations to make available and timely provide network facilities and services. It further allows in subsection B for any person to petition the Commission for a finding that a facility is or is not essential.

We reaffirm here a conclusion reached in the Arbitration Order that "the disaggregation inherent in the definition of unbundling goes to the pricing and availability of a network element rather than to whether or not a facility can be further separated into discrete network functions dedicated for exclusive use." We further reaffirm that

[8] CFR § 51.307(c) requires USWC to provide access to an unbundled network element, which includes that elements "features, functionality and capabilities," in a manner allowing AT&T/MCI to provide any telecommunications service that can be offered by means of that network element. Subsection (d) requires that access to the facility or function of network elements be separate from access to the facility or function of other network elements, for a separate charge. Subsection (e) requires USWC to provide technical information about its network facilities sufficient to allow AT&T/MCI to achieve access to unbundled network elements.

"unbundling" provides an opportunity for a CLEC to separately purchase an element but does not in our view require that each media element in the network be literally unbundled and separately provided. USWC in its words has "hundreds of unbundled network elements" comprising its local interoffice network in the Salt Lake City local calling area, all and each of which would be available to AT&T/MCI as unbundled network elements in the interconnection agreement. Taking USWC's approach to its logical conclusion implies that it would separately charge for every piece of hardware and software involved in the transmission, routing and switching of AT&T/MCI traffic. Such an approach would become unworkable from the standpoint of costing, pricing, billing and invoice verification.

We find that severing already-assembled elements solely to preclude their being offered in combined form would result in an inefficient, artificial and undue imposition of cost. We deem costs discriminatory, inefficient and artificial when they would not necessarily be incurred by USWC. Encumbering CLECs with such costs cannot be legitimized under the guise of the Eighth Circuit's Order on Rehearing. We find such a result inconsistent with the public interest. Despite USWC arguments to the contrary, we conclude that entrants opting to enter the market using sound engineering judgment regarding configuration of purchased unbundled network elements should not be subjected to heightened capital and business risk. USWC did not historically incur such risk as a monopoly supplier of telephone service. AT&T/MCI will incur far greater entry risk today in a multiple suppler market dominated by USWC which retains market power in many product markets in Utah. We conclude that economic efficiency and the parity principles in state and federal statutes should not be needlessly sacrificed for a misinformed legal ruling that frustrates state and national legislative policy goals.

We noted in the Arbitration Order that finished retail products purchased from USWC at permanent wholesale discounts reflecting avoided retail cost are priced substantially less than the sum price for an equivalent combination of network elements purchased from interim unbundled element price schedules. We found no evidence of price distortions between avoided cost discounts and unbundled network element prices that create the arbitrage opportunity advanced by USWC. We still find no available resale service where the sum of interim UNE prices for the recurring, non-recurring and usage prices for a combination of assembled UNEs [9] would be less than or equal to the

[9] We note that the forward looking economic cost models under consideration in Docket 94-999-01 produce network element costs that include capital and operating costs incidental to the initial installation and combination of network elements that combine to form the network in addition to operating expenses for maintenance, network operations and corporate overheads.

price of an equivalent wholesale service reflecting an avoided cost discount established in Docket No. 94-999-01 (Phase I Order).

We do not by this decision intend to eviscerate resale as an available entry vehicle under the 1996 Act. Entrants are free to choose that mode of entry to secure the now more advantageous ordering and provisioning milieu. We note that we here decide in conceptual terms the rules of engagement for how AT&T/MCI shall access the public network. The economic essence of our decision relates not so much to what combination of network elements AT&T/MCI may purchase from USWC to provide finished service, but rather what the purchase price is. As permanent prices are established during the course of Docket No. 94-999-01, we will be mindful of any price arbitrage opportunity that would arise from exploiting a price differential between wholesale prices and the sum of UNE prices that form a service equivalent to one purchased for resale.

Issue 7.-.41 -- Operational Support Systems ("OSS")

Pursuant to § 252(d) we must provide a schedule for implementation of the terms of the interconnection agreement. We concur with AT&T's representation of the intent of our interim orders issued March 25, 1997 and December 24, 1996 in this arbitration. We conclude that the interconnection agreement should reflect only EDI implementation dates, including a date for the unbundled network element platform. We so find because USWC's Interconnect Mediated Access ("IMA") does not comply with our prior order that "EDI architectures and interfaces will best serve the public interest". We adopt the EDI pre-order availability dates enumerated in correspondence to the Commission from counsel for AT&T and USWC dated June 4, 1998 and May 29, 1998, respectively. We order that paragraphs 9.1 through 9.1.5 of Attachment 7 to the interconnection agreements filed by the parties on May 27 and May 28, 1998 be amended as follows:

9.1 Operational Support Systems shall be available for preordering, ordering, provisioning, maintenance, repair and billing under the following target schedule:

9.1.1 Service Resale for POTS and Multiline Hunt Group up to 12 lines by 1/1/98;

9.1.2 Complex Business services by 2/28/99;

9.1.3 Interim Number Portability by 9/30/98;

9.1.4 Unbundled Network Platform by 2/28/99;

9.1.5 Other elements within the Agreement by 2/28/99 or as agreed to by the Parties.